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Surveillance and Resilience: Relationships, Dynamics and Consequences

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ABSTRACT

‘Resilience’ is a contested term with varying and ambiguous meaning in governmental, business and social discourses. Surveillance is increasingly relied upon as an instrument for resilience, enhancing the capability of anticipating, preventing or recovering from adversity, thus preserving the fabric of society and the state. However surveillance itself might undesirably erode social freedoms, rights, and other public goods. In the present study we focus on the interrelationship of surveillance and resilience. Studying the relationships between surveillance and resilience requires not only the theoretical study of possible examples but also the exploration and evaluation of the resilient entity’s core properties, strategies and tactics and the external observer’s stance towards the entity in question. Furthermore, different contexts may exhibit different effects of surveillance on resilience. For example, an increase in surveillance by a democratic state may lead to increasing resilience of the state in the face of terrorist attacks but may also lead to the decreasing resilience of that society’s ability to exercise democratic values. The various models generated by these differing relationships will be explored with relation to three examples: the surveillance of international migration, the surveillance of extremist views, and the surveillance of digital financial transactions.

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Surveillance and Resilience: Relationships, Dynamics and Consequences

Introduction

The threat to privacy posed by surveillance has long been recognised in the academic literature,¹ and appears greatly intensified in the post-9/11 era of the mass surveillance of electronic communications.² Through a combination of theoretical development and three topical case studies, namely the surveillance of international migration, the surveillance of ‘extremist’ views, and the surveillance of digital financial transactions, this article explores the relationship between surveillance and certain cultural, normative and legal aspects of Western liberal democracies that surveillance is often cited as working to protect against terrorism, organised crime and other threats. Furthermore, the article argues that the concept of resilience is a fruitful way to approach this research question, and that this concept, which is today frequently cited in the security domain in the context of combating terrorism and major threats to law and order, can be repurposed in order to model the ability of societies to withstand the threats posed to democratic values by surveillance itself. While societies may exhibit resilience toward surveillance, the article cautions that this can by no means be assumed automatically to happen and that democratic societies and their core values may be found not to be sufficiently resilient and may instead fail, in the sense that they witness the advent of autocratic rule and the abandonment of open democratic politics, rights protections for citizens and groups, and judicial independence.

The structure of the article is as follows. We begin by exploring the notion of resilience, and then turn to definitions of ‘public goods’. We then introduce three case studies before using them to examine the relationships, dynamics and consequences of the interactions between surveillance and resilience, and conclude with some reflections on the implications of the

foregoing analysis for our understanding of resilience, as well as on the insights the notion of resilience can bring to the study of societal responses to surveillance.

‘Resilience’ is a term used in a wide variety of discourses of business, government and society.³ Various definitions of the term have been proposed (see for example the works of David Chandler and Philippe Bourbeau).⁴ Resilience may refer either to an existing property of a system, or to measures designed to help the system reach the goal of exhibiting such a property in the future. For policy-makers (albeit not for critics of the concept; e.g., Neocleous⁵) it is generally regarded as a ‘good thing’, involving the ability of individuals, communities, organisations, countries and other entities to ‘bounce back’ following adverse attacks or misfortune, or to be able to take precautions against these occurrences. The dangers and events may involve war, terrorism, damage to critical infrastructures, public health, or other calamities. ‘Resistance’ is a related term, but different in its emphasis, indicating that the entity ‘stands up’ to these dangers, perhaps opposing them in a heroic or defiant way, although the two terms in question are often used interchangeably in everyday parlance. Resistance may however be one of the components of resilience, alongside processes such as anticipation, precaution-taking and ‘bouncing back’. It is of positive value for the citizenry to be undaunted, plucky, or resourceful in the face of, or following, threats to their existence, further development, or cherished ways of life. Governments may encourage resilience among the population, providing resources and infrastructures so that communities can act resiliently, whether by precaution or remedy. Governments may also gain favour by directly protecting their citizens from disasters, including action following adverse events. They may lose favour if these expectations are not fulfilled.

Remedial action following adversity is one thing. It is even better if governments can prevent these events from occurring, or can take precautions to mitigate their effects, rather than waiting until they happen and then having to respond entirely reactively and unpreparedly. Precaution may involve heightened intelligence capabilities effected through the assembling of sources of knowledge about things that may come over the horizon. It may also involve ways of putting this knowledge to use effectively and efficiently. Some sources of knowledge are provided through surveillance systems and techniques applied to domestic or foreign populations, or to elements of the natural or human-made environment that may pose threats to the systems or societies for which resilience is sought. Surveillance for a variety of purposes has become commonplace in many countries. It is typically justified by the declared purpose of keeping people safe and nations secure, although these aims are often ambiguous and play upon fears that may or may not be justified by the extent of surveillance or of the resilience practices that surveillance supports. Surveillance might be deployed by specialist agencies, by responsible agents working in threatened entities, or by individuals and communities themselves. This deployment is aimed at enhancing the capability of anticipating, preventing or recovering from adversity, thus preserving and strengthening the fabric of society and the state. Noteworthy here is the way in which national security strategies espouse the rhetoric and promote techniques of resilience and surveillance in dealing with perceived terrorism threats at different levels of scale, as Coaffee and Fussey point out,⁶ and as we show below in a case-study of countering ‘extremism’ in the UK. Although the cases described in this article illustrate this point *en passant*, their main thrust is to explore the infrequently visited terrain of resilience vis-à-vis surveillance itself.

Surveillance itself – paradoxically – may also undesirably erode the very rights, social freedoms and other ‘public goods’ that are among the values that the state’s resilience

measures aim to preserve or restore.⁷ The reason that this is properly a paradox, as opposed to the common claim that rights and security need to be ‘balanced’ and exist in a zero-sum game between the two, is that surveillance is often regarded as a tool to preserve democratic values yet at the same time is eroding the very same values (although the latter effect is much less advertised). As we explain further in the next section, we use the term ‘public goods’ in the sense of ‘common good’ or ‘public interest’ rather than in the more familiar economic sense of goods that are non-rivalrous and non-excludable. Following Loader and Walker,⁸ we sometimes append the adjective ‘constitutive’ to ‘public goods’ to indicate that we are concerned with the core qualities of (western) societies, including rights, freedoms and liberties that might be under threat from surveillance. Thus constitutive public goods are societal goods seen as integral and essential elements of society. Their erosion might be an unwanted side effect of resilience strategies or tactics in liberal democratic countries, but in some countries with authoritarian regimes, resilience and the surveillance practices that assist it are deliberately undertaken in order to maintain the regime in power and protect it from those who would seek to topple it. Undermining public goods is part of such strategies in those regimes, or at least it is easily condoned as a by-product of surveillance. Even democratic societies use surveillance in the service of the state and society against threats, and especially in nervous or paranoid times it might reach further into the lives of people, or certain kinds of people, than liberal democracy would wish. In all kinds of political systems, the public good of security or safety, as avowed by those in power, takes pride of place in the face of threats, albeit with very different political implications and resonances throughout society, and with very different rationales, aims, limits, and problems of legitimacy.

In a previous article we surveyed the underlying conceptual and theoretical groundwork for the general idea and practice of resilience, reaching across to elements of general systems and

cybernetic models to highlight important points and concepts that would be useful in the study of resilience, and developed a number of diagrams to explore what happens in the various possible interactions between threats and responses or non-responses and to sketch the phases or stages through which resilience passes.⁹ Building upon a diagram of a general model of resilience (Figure 1), we develop a model of resilience taking into account ‘public goods’, as is illustrated in two diagrams reproduced below (Figures 2 and 3), respectively illustrating resilience and resistance. Put simply, resilience involves recuperation from, or prevention of, adverse events; resistance involves opposing them when they present themselves. The processes involved in each may overlap rather than representing wholly different stances.

In this article, then, our use of the concept of resilience stands in contrast to its two main prior uses in policy or academic literature. These three possible applications of the concept of resilience are summarised in Table 1. First, and as noted above, one of the main ways in which ‘resilience’ is referred to in policy terms is in terms of a desirable strategy or goal in reference to a particular entity such as individual, group or society. Second and conversely however, an undesirable entity – for example, an authoritarian regime that violates liberties and the rule of law – may be seen to exhibit ‘resilience’ and persistence, including where this second entity is the target of the first. In relation to surveillance and security, for example, a government may introduce a counter-terrorism strategy invoking elements of ‘resilience’ (such as preparedness, contingency strategies, learning from mistakes made); but terrorist groups may also be described as exhibiting ‘resilience’ to detection, surveillance or disruption by the security forces. Whilst we share the concerns of some critics of resilience strategies as to the possible negative consequences of these strategies, in this article we develop further our previous argument namely that, setting aside for one moment the uses to which resilience may be put, the *concept* of resilience has wider potential analytic utility. In both our previous work

and here, the way in which we have applied the concept of resilience is different, namely that we argue that in addition to applying the concept to societal entities such as individuals, groups, institutions societies or regions, we can also meaningfully apply it to abstract concepts found in political theory and other disciplines such as ‘democratic values’. Specifically, we suggest that this novel approach can be useful to consider whether a particular public good, such as freedom of expression or freedom of movement, will prove ‘resilient’ in the face of adverse circumstances – including (perhaps ironically) ‘resilience’ measures that may have been introduced in the name of protecting society from attack. The distinctions between these three different applications of the concept of resilience are illustrated in the table below, in which our primary focus is with the third of these:

[Table 1 about here]

[Figure 1 about here]

[Figure 2 about here]

[Figure 3 about here]

Whereas much of the literature on resilience focuses either on the level of society as a whole or on specific policies or strategies, in this article we argue that it is important both to identify the values that resilience strategies are seeking to protect, and that since societies value various kinds of public good – as suggested above, with reference to security – it is necessary to make such discriminations and to bring them into the analysis of resilience. This is because they vary in their resonance within populations, and because there are tensions among them that may lead to conflicts; for example, between security and liberty or privacy. Moreover,

since societies are often composed of a plurality of communities and interest groups, it is important to develop a model that acknowledges the values or resilience of certain specific groups rather than consider them exclusively at the level of society as a whole.

In addition, it could be the case that one public good or value can be regarded as resilient while another one is eroding, making it difficult to apply the general label of ‘resilient’ to the society as a whole. This could occur where, for example, the principle of democratic participation is resilient in the face of autocratic threats but the Rule of Law declines in its salience, leaving minorities less well able to ‘bounce back’ from such attrition. Such conditions of situation- or context-dependency, even within the same society, have not been studied extensively. We contend that these analytical gaps are especially necessary to fill in the context of surveillance, given the way in which the latter affects the range of public goods that are constitutive of a liberal democratic society and polity and given the dramatic increase in recent years of the surveillance technologies, powers and capabilities of nation states. We continue with a discussion of our use of the term ‘public goods’.

Defining Constitutive Public Goods

Resilience is a value-neutral notion, and ‘bad’ systems (which are antithetical to our worldview or our moral conviction, or are simply deficient or imperfect) may also be resilient. However, in relation to a discussion of the wider impact of surveillance on liberal western societies and constitutional democracies, the reference state of a social system can be defined with regard to its valued public goods. In order to elaborate our theoretical analysis in the intersection of surveillance and resilience, and to explore further our theses in real-life examples, we need to examine in greater detail the reference state – in our case the public goods, including the constitutive public goods – to explore and assess different possible

definitions of ‘public goods’, and to investigate which of these goods are resilient towards which impacts, and how surveillance interferes with such characteristics.

Authors who investigate public goods in an extended sense, or separated from their original economic meaning, tend to exemplify some of these goods (such as clean air or national security), emphasising their non-rivalrous and non-excludable character, however, without providing a full list of such goods. Kallhoff does however attempt to construct a coherent system of public goods, incorporating both their economic and non-economic forms. She identifies seven regimes of goods: inner and outer security, infrastructures, education and science, environmental goods, public spaces, cultural goods, and institutions of care.¹⁰ However, it is worth noting that privacy – a public good we tend to accept as a constitutive public good in western liberal societies – is not mentioned in any of the seven categories, nor is the resilience of public goods. Raab notes that privacy as a public good, or social value, is recognised by a number of authors and is gaining ground in the discourse and practice of information and other forms privacy, and – as we claim later – it may also be the case that privacy and security bear a close resemblance.¹¹

Several theorists attempt to define a core set of public goods the existence of which are of crucial importance in a western liberal society. From a universal ethical aspect, Kallhoff follows Nussbaum's notion of ‘central public goods’, which is based on the people's ‘central functional capabilities’.¹² However, conceived this way, these goods – partly because of their universalist approach, partly because of their level of abstraction – are not suitable for using in our specific field of research, the intersection of surveillance and resilience in the context of political and societal systems. From a different approach, Rawls, in his (revised) classic work, defines the list of ‘primary goods’ as follows: “the chief primary goods at the

disposition of society are rights, liberties, and opportunities, and income and wealth”¹³ and calls them ‘social primary goods’. In addition, he mentions examples of ‘natural primary goods’ (health and vigour, intelligence and imagination) the possession of which is influenced by the former type of primary goods but which are not directly under their control.

Others analyse the public goods of certain specific fields: open source software is a central example of Digital Public Goods;¹⁴ Digital Commons is an open access repository where “institutions can collect, preserve and make visible all of their intellectual output” to the public;¹⁵ Creative Commons¹⁶ offers the free use of intellectual property to anyone, within the limits defined by the creators. When introducing the category of ‘constitutive public goods’, Loader and Walker do not attempt to define its exact extent and content. In their work, it is not the system of constitutive public goods that is of primary importance but security in a broad sense, which the authors define as a global public good.¹⁷

For several reasons, it is difficult to compose a comprehensive inventory of public goods. The totality of such goods presupposes the existence of an ideal societal system, but actual societies are imperfect and do not contain all necessary elements with the same weight.¹⁸ Some constitutive public goods are societally-related notions describing interrelationships between the members and groups of society, such as trust, respect, solidarity and mutual tolerance, freedom, personal autonomy; at a different level of abstraction, others consist of rules and institutions designed to ensure the prevailing of the former, such as constitutionality, rule of law, democratic institutions, laws guaranteeing rights and freedoms, checks and balances, etc. The existence or deficiency of the latter goods is easier to judge than that of the ‘societal’ public goods; therefore there is a temptation for researchers to evaluate the compliance of a society with western liberal ideals solely on the basis of the legal or

institutional forms of public goods. Moreover, if we compare existing societies to the ideal, it is also difficult to judge from the aspect of resilience whether the starting reference point itself is empirically compliant with the ideal, or is aspirational. Similarly, it is hard to define the limits of adverse impacts: up to which point can a system still be regarded as ‘western-liberal’?; what is the required level of its resilience?; and on which constitutive public goods can it be measured?¹⁹ At the level of the society as a whole, surveillance may strongly erode certain constitutive public goods, while others suffer only a minor erosion; and some constitutive public goods – security for example – can even gain strength as a result of surveillance.

Our earlier article touched on the applicability of general systems theory to human affairs, and pointed up the interesting but difficult question of when changes *in* a system can be construed as the change *of* the system into something different. In terms of public goods, when does the erosion of specific public goods, or of an aggregate, have a lasting adverse effect that leads to a loss of resilience and thus the fundamental change of the whole system? For example, considering the extensive and intensive collection and analysis of data, including personal data in contemporary society (‘datafication’)²⁰ (insert reference for this term?), some would argue that the predictive analysis of personal data deprives a significant part of the political and economic community of free choice or of developing and satisfying their demands. This is because the ‘digital shadow’ or ‘digital footprints’ do not only follow the person but virtually precede her, thus an act of ostensibly autonomous choice is but a pre-constructed frame in which we act according to the expected patterns. Can we say that in this situation the realisation of personal autonomy as a constitutive public good fell below the minimum level, and thus the system does not live up to the ideals of a western liberal society?²¹

Another possibility is that one (or some) public goods increase while another (or others) decrease. If in a society security in a general sense is increasing, due to extensive surveillance and privacy and personal autonomy are decreasing, can we speak about ‘balancing’?²² Is such a society western-liberal in the same way as it was before change? According to numerous authorities on surveillance studies, the answer is no,²³ although they do not define exact borderlines of change either. In addition, western liberal democracies, despite their common elements, came into existence on the soil of different cultural, societal and political traditions, in which the roles and composition of individual constitutive public goods are also different. Assessment as to whether significant social change has taken place may depend heavily on public opinion and belief, and on the behaviour that follows from them; or on a careful analysis of the functional possibilities for society that are either closed down or opened up as a result of the rise or fall of certain public goods.

If we investigate not only ‘traditional’ democracies but also ‘new’ democracies – that is, countries recently freed from their dictatorial political systems, for example countries of Central and Eastern Europe (CEE) – then we observe that importing formal frameworks, such as legal and institutional systems, does not necessarily also entail the creation of public goods such as trust or solidarity. In these ‘different democratic contexts’ it is even more problematic to define the necessary level of resilience. If in these countries surveillance, for example, serves to maintain the operation of the welfare state, are we more tolerant of its use in the post-transition democracies of CEE than of its use in traditional democracies of the West?

To add a further complexity, societal systems are far from being static, and are constantly changing in interaction with economic and political systems: which state of the society shall we take as a starting point or reference? If we optimistically suppose that the totality of public

goods or certain elements thereof are steadily improving in society over time, rather than being constant as the red horizontal line in Figure 2 (above) implies, and are in fact more akin to the steady societal development depicted in Figure 1, then we can compare the adverse impacts and the resilience of the system to a virtual upward slope. Present-day societies, however, show signs of moving away from western liberal ideals, both in traditional and new democracies. Greskovits analyses the two most visible elements of these changes at the institutional level, ‘hollowing out’ and ‘backsliding’ (that is, citizens lose their interest in participating in democratic actions, and governments revert to semi-authoritarian practices) in post-transition CEE countries. According to his analysis, these countries show a varying level of resilience in terms of the stability of their democratic institutional practices and trust in these institutions.²⁴ Székely identifies an almost unavoidable virtual low tide of rights and freedoms in post-transitional societies after the initial euphoria of the political changes.²⁵

But even if we are unable to define the full extent of constitutive public goods and the expected level of their realisation, we can attempt to localise their absence or deficiency. If we are witnessing the erosion of an existing western-type liberal political and social system, either in the form of an increasing distance from the ideals, or as a deficient level of resilience, then we can try to identify the point at which the system becomes anti-democratic or authoritarian. Partly following a formal logic in setting up a virtual scale on the two ends of which democracy and autocracy are denoted, Kis defines two types of political system in the middle range of the scale: deficient democracies and endangered democracies. A central question in his study is whether the interactions and interrelationships between the subsystems of democracies lead in the direction of stabilisation or in the direction of destabilisation of the whole system.²⁶ Nevertheless, he analyses only those elements of constitutive public goods that relate to the legal and institutional framework of a liberal democratic system.²⁷ We can

conclude therefore that when studying the development or erosion of public goods and their realisation, as well as evaluating their resilience, we can observe and define their *trends* in social and political processes and their impacts, rather than their absolute breaking points.

There is a further element of complexity: the homogeneity or heterogeneity of a society. In the foregoing, we considered the social system as a single unit (although we noted above the plurality of communities and interest groups in society). We cannot here examine in great detail the various social and cultural segments of society in terms of the constitutive public goods that will supposedly have a different composition and importance in each of these segments. We regard western liberal societies as fundamentally open and multicultural, even if multiculturalism is not necessarily manifest within the geographical and historical context of a given society. Segments of a society composed of significant ethnic groups or cultural minorities may have different public goods or different priorities among these goods. However, multiculturalism itself, or rather the acceptance of minorities by the majority, and the acceptance of diversity by members of minority groups, can be regarded as a public good at the level of the whole society. Kymlicka distinguishes neoliberal multiculturalism and multicultural nationalism: he regards the former as inclusive but not-accepting, and the latter as an organic compound of solidarity and multiculturalism. In the latter social formation, it is not the social contribution of the diverse social groups to the whole of society that justifies their place and order: their mere existence is a contribution to the wider society or nationhood. According to this view, diverse multicultural societies also have constitutive public goods the existence and realisation of which are important to every constituent group in society, even if certain individuals or groups do not perceive this, or are preoccupied with fighting for their own partial interests.

If the social and political systems – either diverse multicultural ones or, as Kymlicka puts it, welfare chauvinist ones²⁸ – suffer strong impacts (stresses and shocks) that change the reference point of resilience, then conflicts arise both in the system of public goods and among the constituent groups in society. The recent European migration crisis clearly represents such stresses and shocks. When enlisting and evaluating the potential responses to these, we need to distinguish universal humanitarian obligations from the realisation of public goods in society, or more precisely, the migrants’ contribution to strengthening or degrading these public goods. In a subsequent section we will analyse the problems posed by migration in the context of surveillance.

Case Studies

We believe that the effects of surveillance upon resilience are best understood in specific cases, against a background of a general framework for the study of resilience that we outlined earlier. We have chosen three such cases for further analysis here. The three cases, of contemporary relevance, have been chosen as contrasting examples of the intensification of surveillance at the level of states and international activity, and as sites in which the resilience of those subjected to surveillance is severely challenged. The cases are the surveillance of international migration, the surveillance of ‘extremist’ views, and the surveillance of digital financial transactions.

These cases are offered as examples that conveniently illustrate important aspects of the overall analysis, rather than as tests of any theories or hypotheses. As explained below, the cases represent different but related facets of anticipatory or coping surveillance activities by states and international actors in dealing with perceived threats to national and international security and related public goods. The three cases have been selected firstly because all

potentially or actually affect the public goods, including human rights, of people as they live their daily lives, often placing them under suspicion in ways that reverse the presumption of innocence, and secondly because each helps identify the various different sectors and actors at play that could be said to be resilient (or not resilient). The subject matter of each case is not wholly discrete. To a large degree, each has gained impetus as a facet of the governmental and inter-governmental response to the widespread fear of, and expansion of, terrorist attacks on societies that are constituted by liberal values and public goods of the kind being considered here. For the moment, let us dwell on terrorism, although it is not the only surveillance-related show in town. There has been a great deal of academic and policy commentary on contemporary counter-terrorism policies and practices in Western societies (here used as a shorthand term for liberal democracies) since the outbreak of terrorist attacks in a number of countries in the years since 2001. Much attention has been paid to several phenomena that are considered by many policy-makers and observers as generators of terrorist threats to the values and public goods of these societies. The ubiquity of communications through the internet and associated technologies potentially affords terror groups the ability to conspire, co-ordinate, and finance their activities in new ways. And the recent mass movements of populations from centres of war and disruption – countries which are believed to harbour protagonists of ‘extremism’ – into many Western societies who feel overwhelmed by sheer numbers of incomers, among whom might be potential terrorists, has served to focus on the migratory process as an important site for deploying surveillance.

In these cases, among the aspects that it can useful to examine are:

- the *relationships* involved in surveillance and in resilience in the face of it. Here we are referring to the relationships between the various different participants or actors,

because action and reaction is both pluralistic and differentially distributed across society in regard to perceptions, initiatives and responses.

- the *dynamics* of the processes of surveillance-and-resilience. As our model indicates, these phenomena move through time, and it is important to pay attention to their sequencing in order to understand and assess the activities in greater depth.
- the *consequences* of surveillance for the specific public goods and societal values at stake in each case. This follows from the perception of surveillance as a public issue because of its potential effects on social and political life, seen in terms of the multiple rights, values, and qualities held to be desirable and defining properties of liberal democracy.

Investigating these aspects is likely to provide a large number of insights into both the nature of contemporary surveillance and the repertoire of resilience strategies available to the societies that are subjected to it.

The surveillance of international migration

The recent European migration crisis or refugee crisis²⁹ is a specific research area in the intersection of surveillance and resilience. It is the phenomenon in which masses of people appeared at the external borders of the EU and its neighbouring countries with the aim of receiving asylum and residence permits in these countries – a process which has been occurring for long years but received adequate political and media attention only since 2015. One naturally needs to distinguish this sort of mass movement of people and crossing of national borders from the realisation of a fundamental principle of the European Union – the free movement of goods and people – from the practice of studying and working abroad, an opportunity open to all EU citizens, and also from tourism, which involves the flow of non-

EU nationals within the EU under controlled circumstances. In the migration case, foreign nationals, stateless individuals, and, in most cases, non-identified individuals enter the territory of European countries under hardly controllable circumstances. Their mass appearance triggers a range of humanitarian, policing, religious, ideological, political, security, as well as economic and cultural conflicts in the receiving countries.

For security and policing reasons, it is a natural demand of the host countries to collect and analyse information about the size of the actual and foreseeable waves of refugees and the individuals who enter the territory of the country. The national authorities also need to collect information about these people's humanitarian needs and the extent of their fulfilment, as well as about the group and individual movement of refugees within the territory of the country for various reasons. The surveillance of refugees can be classified into two main categories: (a) group or mass surveillance³⁰ and (b) individual surveillance.³¹ In the first category the subject of surveillance is the groups or masses of refugees, their general composition (for example the proportion of women and children) and their physical movement (for example heading towards a national border or occupying trains), without knowing the individual identity of their members. In the second category the subject of surveillance is the individual, that is, the identified or identifiable persons regarded as refugees.

From the recent history of the refugee crisis it can be established that the flow of refugees found the receiving countries largely unprepared, and this led to controversial measures taken by the countries concerned and the lack of EU-level political consensus.³² The unpreparedness and the resulting humanitarian crisis – in particular, the limits of mobilisable human and technical resources – led to a situation in which group/mass surveillance worked relatively effectively (partly due to reports and forecasts prepared by secret services and law

enforcement agencies), while in the first period individual surveillance – including the identification of individuals – was deficient. In the following we will focus on individual surveillance, identifying the range of stakeholders, their interests and activities in connection with surveillance, the temporal changes in these areas, and the foreseeable consequences.

The main stakeholders in the individual surveillance of refugees are the refugees themselves; their relatives inside or outside of the target country; the authorities and their local specialised branch offices in refugee camps, together with their personnel, policemen and military servicemen; civil liberties and humanitarian aid organisations; human traffickers; and the general population of the country concerned. The interests and attitudes of the refugees are changing in line with the information they receive from their acquaintances and relatives through informal channels, and the information government officials and the official (and unofficial) media are spreading. Beyond achieving physical survival, the majority of refugees regard the Balkan and CEE countries as transit routes to Western Europe and Scandinavia as ‘target countries’. Those who originally planned to apply for asylum in these transit countries first consented to staying in government- controlled refugee camps where they had been properly registered. After having experienced the low level of hospitality of the authorities, the unforeseeable length of waiting for the judicial process and the high proportion of expulsion orders, several disturbances took place in the refugee camps, some of which resulted in the escape of groups of refugees. This, together with the uncontrollable inflow of new refugees, provoked the governments of the transit countries to set aside the requirements of registering people, and instead, urged the masses of unregistered refugees to continue their journey to West European countries and leave the territory of the transit countries as soon as possible. Later, observing the demands of the target countries (and also complying with the

intergovernmental law enforcement agreements in force) registration has become more frequent and organised.

In the refugees' actions, tactics and strategies both resistance and resilience can be identified. Although the similarities, differences and overlaps of resistance and resilience can be conceptually debated,³³ breaking through closed national borders, occupying trains, fighting with the police can be regarded as manifestations of group resistance, and individuals' escaping from refugee camps are an example of individual resistance. However, in the perspective of our research, more interesting are the signs of resilience, both in the economic and cultural sense and in connection with surveillance. In the latter case identifiability and traceability are two sister conditions, and according to interviews with refugees, as well as reports of humanitarian aid organisations – such as the Hungarian Helsinki Committee³⁴ – and activists, these two conditions are connected in the refugees' minds as well.

Those refugees who were hoping to receive asylum arrived with proper identification documents and submitted these documents to the authorities. The majority of those arriving in subsequent waves, however – as a result of receiving insider information from the refugee camps, as well as learning the propaganda of the governments of certain countries – destroyed and discarded their documents in order to conceal their real identity and make their traceability more difficult.³⁵ It should also be noted that a proportion of the Syrian ID documents carried by the refugees are reportedly forged.³⁶ Many refugees also discard their smartphones before crossing European borders because smartphones contain a host of identification data relating to both its owner and his connections. However, mobile phones, and smartphones in particular, are sometimes indispensable communication and navigation tools for the refugees; therefore they tend to re-use mobile phones discarded by others or

change the SIM cards. The improvised nature of such practices can be seen as examples of the resilience and resourcefulness of people who are determined to succeed.

The authorities of the receiving (and partly the transit) countries attempt to identify and register the refugees arriving at their territory. Because of the lack or dubious authenticity of the ID documents, (forced) fingerprinting has become a popular way of registering people.³⁷ However, refugees tend to avoid being fingerprinted in transit countries and want to be registered only in their target countries.³⁸ In September 2015 the Czech police started to mark refugees arriving at railway stations with numbers written on their hands and arms with permanent ink.³⁹ Human rights advocates and Jewish groups expressed outrage, saying that this practice summoned memories of the Nazi era,⁴⁰ and a few days later the Czech government had to abandon this practice.

We need to distinguish here the general humanitarian aid, which is due to anyone in need, even without identification and registration, and the procedure of applying for refugee status that evidently necessitates the identification and registration of the applicants. Even the demand to avoid multiple claims for humanitarian aid by the same person or to detect repeated attempts of expelled persons to re-enter the country does not necessarily require registration: biometric data such as fingerprints or iris scans can serve as ‘anonymous’ identifiers that the data subject has to produce in each case when applying for humanitarian aid or entering the country.⁴¹ The identification of the refugees and their interests in revealing, concealing or forging their identity is a complex issue. Depending on whether they deem it advantageous or disadvantageous, or whether they know (or think) that revealing their real identity may pose serious risks such as detention or expulsion, refugees change their attitudes and willingness to identify themselves under real or forged identities. A significant group of

refugees, for example those coming from Somalia or Afghanistan, have never had proper identification documents, or if they manage to buy such (forged) documents, authorities in the target countries do not regard these documents as credible and acceptable.⁴² Some refugees do not even know their own citizenship, as was the case with a former taxi driver who used to drive between Syria and Iraq, and who was arrested and interrogated in Hungary.⁴³

Since Syrian origin is generally regarded as an advantage, refugees often declare themselves Syrian, even if they do not speak the language of that country. Belonging to a family that has already received asylum in Western countries or permission to travel to these countries is also an advantage, so several refugees declare themselves belonging to such a 'safe' family, even if there is no relationship.⁴⁴ Being a minor can prevent the expulsion of refugees who otherwise are unable to prove their refugee status. Without proper identification documents authorities can only determine a probable age range, for example 16-19 or 18-23 years of age. Naturally, young refugees declare themselves underage; however, authorities in transit countries tend to take the middle value of the determined age range and not the value that would be the most advantageous for the person concerned. Other elements of a person's declared identity, such as being a homosexual, an opposition activist, or member of a minority religious community – if such identities are persecuted in the supposed home country – are even more difficult to check.⁴⁵

Despite many controversies, human traffickers and refugees have certain common interests and common risks; therefore the traffickers' advice (or demands) are taken seriously by the refugees. In the recent period, traffickers working in the CEE area have encouraged refugees to discard their ID documents (or simply collected the documents from their clients) and suggest that they avoid being fingerprinted, thus also reducing their own risks if arrested. On

the other hand, however, human traffickers have vested interests in identifying, and keeping identified, refugees and their families, either in the country of origin or in a target country. Refugees typically become indebted to organised human-trafficking networks and have to pay their debts for many years; thus stable identification methods, such as registered mobile phones or SIM cards, are necessary for maintaining a verifiable connection.

The interests and policies of the transit and target countries are also changing. Hungary is a striking example in Europe: the ruling political regime tries everything to avoid the accommodation of refugees,⁴⁶ and therefore has sent large groups of refugees through the country as soon as possible in order to have them leave Hungary without identification and registration. This coincided with the interests of the refugees themselves, who tried not to be identified and registered in the transit countries. Thus we can regard this situation as an unspoken collusion between the authorities and the refugees. We can also regard this situation as a resilient action of a transit country, at least at the level of political rhetoric, and this may shed light on significant differences in the composition and realisability of constitutive public goods in countries of the CEE region.

In the course of the escalation of the refugee crisis, the European countries concerned have significantly enhanced the technical and human conditions of identifying and registering refugees, increased the amount of mobilisable resources, as well as enhanced the level of co-operation among the law enforcement agencies of the countries concerned. Policemen started to collect discarded passports and smartphones, analyse the available information, enter the data into computer systems and share the digitised information with their counterparts in other countries.⁴⁷ Interpreters speaking languages of the refugees have been employed at registration points, frequently refugees themselves who already obtained residency permit in

the host countries. The consequence of these developments is that ‘physical’ refugees increasingly become, as Jacobsen puts it,⁴⁸ ‘digital refugees’, the rights, opportunities and future life circumstances of whom depend on the data entered in computerised registration systems and the data collected about them through surveillance, including dataveillance. Function creep is an evident risk of these registration systems: the data about refugees can easily be shared with other data controllers, thus increasing the risk of discriminatory social sorting. Such intentions are understandable from the interests and views of the authorities and local population of the host countries, but can seriously impede the integration of refugees into the society and the realisation of their individual- and group-level cultural autonomy. Thus, it is apparent that the refugees prove to be resilient not only in terms of their physical and economic survival but also in preserving their communication skills and provable identity. However, when they deem their identification, registration, surveillance and tracking disadvantageous, they show signs of resilience towards such practices as well.

This case study shows that the refugees prove to be resilient not only in terms of their physical and economic survival but also in preserving their communication skills and provable identity. However, when they deem their identification, registration, surveillance and tracking disadvantageous, they show signs of resilience towards such practices as well.

Paradoxically, in practical terms, closer surveillance of migrants and migration may be accompanied by an increase in organised criminals’ involvement in human trafficking as they seek to take advantage of migrants’ desire to enter safe or prosperous countries at any cost. Such trafficking may be corrosive of society for the same reasons that organised crime is confronted by agencies of law enforcement. A further paradox may be seen in the Hungarian state’s acting on its incentive *not* to exercise surveillance of migrants by engaging, instead, in

dubious procedures for dealing with them in order to avoid their claims for asylum.

In conclusion, we observe that the surveillance of migrants and migration may or may not bolster national security, but in either case the process risks the negative consequence of diminishing the civility between citizens characteristic of an open society by creating an environment in which mutual suspicion is the norm. In addition, surveillance of migrants can be seen as part of a process of ‘social sorting’,⁴⁹ arbitrating their right to enter or remain in a country. Moreover, the intensive surveillance of migrants demeans their human dignity because it objectifies and implicitly places them under suspicion. In all, the surveillance of migration is part of a process whereby the problem is constituted as one of the security of the country or region concerned. However desirable this may be domestically, it displaces domestic insecurity onto migrants, with indifference to their suffering. In the process, it also fails to address the wider causes of migration. Lastly, the concept and practice of asylum, or in its institutionalised form, the right to asylum, can be regarded as being in the public good itself. It reinforces social cohesion, it is based on reciprocity but does not expect immediate profit, and it is a sort of moral investment of the community. If surveillance is used as an instrument to decrease or avoid the provision of asylum for those in need, this clearly erodes a public good. As was noted at the end of section 2, a notable feature of the migration case study is that it points up the relationship between the constitutive public goods in a particular society, and the wider universal/humanitarian public goods.

The surveillance within UK education of ‘extremist’ views

Within the UK a key driver of its current over-arching counter-terrorism strategy can be traced to the shocking events in London in July 2005 when four British Muslim men travelled from the north of England to the capital and detonated four suicide bombs on public transport,

killing fifty-two victims along with the bombers and injuring over 700 others. While the UK had anticipated a possible terror attack following the 9/11 attacks of 2001 and Madrid train bombings of 2004, what does not seem to have been foreseen by the country's intelligence agencies was that three of the perpetrators would be British-born. There was later a series of inquiries into possible intelligence failings by the security services,⁵⁰ which recognised that there was insufficient resourcing for and focus on Islamist extremism within the UK itself, and that while there may have been direction, training or support for the bombers from overseas, there remained the possibility that some British Muslims were being 'radicalised' in local communities within the UK.

The UK's counter-terrorism strategy is called 'CONTEST' and comprises four different 'work streams' or component strategies, namely 'Prevent', 'Pursue', 'Protect' and 'Prepare'.⁵¹ The strategy initially dates from 2003: after 9/11 but before the London bombings. In 2006 a revised version of the strategy was made publicly available, and further revisions were published in 2009 and 2011 (the latter being the most recent version as of time of writing). Elements of resilience strategising can be seen in these four sub-strategies: 'Protect' aims to target-harden key aspects of national infrastructure such as transport systems and public places in order to make them less vulnerable to attack; whereas 'Prepare' involves developing mitigation plans in the event of an attack in order that the country can quickly recover or 'bounce back'. The 'Pursue' work stream involves work by the security services in detecting or thwarting terror plots, and presumably involves surveillance of particular targets by human intelligence (for example undercover agents or informants) and by monitoring suspects' electronic communications (undertaken by the Government Communications Headquarters (GCHQ), the UK's signals intelligence agency).

Of the four elements of CONTEST, it is the 'Prevent' strategy that has proved the most controversial. Thomas suggests that "Government has acknowledged that, in the original strategy, 'Prevent' was the least developed element, and it has subsequently been prioritised".⁵² The broad aim of Prevent is 'to stop people becoming terrorists or supporting terrorism'.⁵³ Exactly how this was to be achieved has changed over the lifetime of the strategy. It has been claimed that, "there is evidence that the Prevent programme has been used to establish one of the most elaborate systems of surveillance ever seen in Britain",⁵⁴ and while this has been officially denied and probably over-states the claim, the strategy has not been able to shake off such a perception.

In 2009 a senior police officer noted that the Prevent strategy had recently been revised, and commented favourably on the Association of Chief Police Officers' strategy for policing in relation to Prevent, namely that the police should simultaneously "build better engagement within the community" and "generate, share and develop community intelligence".⁵⁵ Yet the two do not sit easily together, and one can imagine that such a strategy may have put individual officers in an invidious position, and potentially have eroded community trust in the police due to the intelligence-gathering function they also perform. In 2010, the strategy was publicly being called into question. One UK newspaper reported that in 2008-9 alone, some £140m was spent on a range of general Muslim community activities including giving £5,000 to one East London mosque "to provide rap 'workshops' and lunches". Many UK mosques received money for sports equipment, various Muslim groups received money, and other groups from other religions became unhappy at not receiving similar funding.⁵⁶

The strategy has continued to attract criticism from various academic authors over the years. It is unclear to what extent, if any, such critiques influenced government thinking, but in

2010, for example, writing about the Preventing Violent Extremism (PVE) ('Prevent') strategy, Thomas summarised 'four key criticisms' already made by a number of other academics, as follows:

that PVE has had an unhelpful and broad monocultural focus on Muslims; that it has been a vehicle for a significant growth in state surveillance of Muslim communities; that PVE in the way it has been designed and implemented is contradictory to other key governmental priorities such as community cohesion; and that the problematic design of PVE has left progress hobbled by intra-governmental tensions at both national and local levels.⁵⁷

In March 2011 a report commissioned by the Association of Chief Police Officers found that Prevent had in fact not damaged police-Muslim community relations.⁵⁸ However, in May 2011 Lord Carlile – the then Independent Reviewer of Terrorism Legislation – published a report addressing some of the issues with the existing Prevent strategy and making recommendations as to how it should be reformed,⁵⁹ and the Government published a revised version of the Prevent strategy the following month.⁶⁰

The policy shift that took place seems have been away from a strategy of trying to fund and hence support Muslim voices opposed to extremism and of funding community activities as a way of appealing to young Muslims or occupying their time. Instead, greater emphasis would be placed on 'challenging' extremism and on developing mechanisms, especially within publicly funded organisations, by which those 'at risk' of 'radicalisation' might be identified and directed to the multi-agency 'support' programme, 'Channel'. Channel, which is part of the Prevent strategy, was piloted in 2007 and introduced across England and Wales in 2012. It aims to "[provide] support at an early stage to people who are identified as being vulnerable to being drawn into terrorism", by "a. identifying individuals at risk; b. assessing the nature

and extent of that risk; and; c. developing the most appropriate support plan for the individuals concerned”.⁶¹ Referrals to the programme may come from a wide range of public organisations, including schools, colleges, universities, social workers, prisons, the NHS, youth offending services, probation, and local authorities.⁶²

The Prevent strategy maintains that “[w]e remain absolutely committed to protecting freedom of speech in this country. But preventing terrorism will mean challenging extremist (and non-violent) ideas that are also part of a terrorist ideology”.⁶³ This commitment appears only partial, however, given that ‘extremist’ ideas would seem not to be protected, and given that the strategy features mechanisms for identifying particular individuals and intervening. An implication of the revised Prevent strategy as a whole is that the object of government attention should be not just ‘at risk’ individuals but also particular locations or institutions that might be supportive (or at least insufficiently critical) of extremist views. One of the objectives of the revised Prevent strategy was to “[w]ork with a wide range of sectors (including education, criminal justice, faith, charities, the internet and health) where there are risks of radicalisation which we need to address”.⁶⁴ In recent years, however, one of the ways in which the Government has sought to ‘work with’ public sector organisations has been to require them to comply with measures designed to identify ‘at risk’ individuals and to restrict the possibility of extremist views being expressed within those organisations or of those being left unchallenged. With the Counter-Terrorism and Security Act 2015, this has become formalised as what is now officially referred to as the ‘Prevent duty’ on various public sector organisations.

The UK Government’s official guidance on the Prevent duty (to which specified authorities are required to ‘have regard’) is careful to avoid language that would suggest that public

sector staff should in any way ‘spy’ on or engage in the surveillance of anyone using their services, and indeed the obligations seem largely to be sensibly drafted and to formalise what in many cases would be common managerial and pastoral practices.⁶⁵ Nonetheless, there now exists a legal duty on named public sector institutions to comply with the law. For example, the Prevent Duty Guidance for higher education institutions in Scotland advises that institutions “should give relevant staff sufficient training to be able to recognise vulnerability to being drawn into terrorism, and be aware of what action to take”.⁶⁶

Arguably, the effect of the Prevent duty in relation to ‘surveillance’ is twofold. First, the duty introduces a legal obligation on public sector staff to be alert to extremist views, to report them within formal mechanisms within their organisation, and to follow policies designed to restrict the expression of such views; and second, the duty effectively places the institutions themselves under suspicion, requiring of them that they put into place certain policies. In other words, even if the ‘surveillance’ practices at present appear extremely limited in their intensity, the duty does however introduce the principle both that public sector staff should undertake a certain surveillance role and that their organisation is itself a potential source of threat. The means by which this is to be achieved is reminiscent of public sector ‘managerialism’⁶⁷ (in which institutions are required to meet certain objectives but have some limited latitude in how to achieve them) and of ‘responsibilisation’⁶⁸ (in which government moves the responsibility for achieving goals onto organisations or individuals).

In relation to schools, non-binding ‘Departmental advice’ was issued in 2015 by the Department of Education, explaining what schools need to do to comply with the Prevent duty.⁶⁹ The document suggests that “[s]chools and childcare providers can also build pupils’ resilience to radicalisation by promoting fundamental British values and enabling them to

challenge extremist views”, but that “the Prevent duty is not intended to stop pupils debating controversial issues. On the contrary, schools should provide a safe space in which children, young people and staff can understand the risks associated with terrorism and develop the knowledge and skills to be able to challenge extremist arguments”.⁷⁰ In the field of education studies, numerous academics have expressed concern about operation, implications and consequences of the Prevent strategy. Thomas argues that “rather than trust in broader and non-stigmatising processes of anti-extremist education, the police-led Prevent has ‘engaged’ with and surveilled young Muslims. Within Prevent there is little evidence of educational processes that explicitly build youth resilience against extremism’ and that we are witnessing ‘a deepening process of education-based surveillance’”.⁷¹ Pal Sian argues that ‘young Muslims have been increasingly subject to scrutinised and systematic forms of disciplining and regulation’.⁷² In relation to education more generally, O’Donnell contends that, ‘A clear set of philosophical and ethical principles ought to underpin education, including in prisons, in order to preserve its autonomy from security and intelligence agendas’.⁷³

It is clear that there has been change in the approach and functioning of the Prevent strategies over its lifetime, but it is less clear that the changes made have been in response to civil liberties concerns. The major changes, in 2011, appear to have been driven instead by criticism from the conservative press that the policy was inadvertently and inappropriately providing significant financial support for Muslim groups, and that there was insufficient attention to the expression of extremist views. The aim of the strategies today includes the attempt to make public institutions more challenging towards extremist views, the referral on to the Channel programme of those most ‘at risk’, and, in the case of schools, for example, increasing children’s ‘resilience’ to ‘radicalisation’. A report by the UK Parliament’s Joint Select Committee on Human Rights recently noted that there are some concerns regarding the

operation of Prevent in relation to Schools, including possible over-reporting by schools, and possible ‘chilling effects’ on Muslim families, though also a lack of reliable empirical evidence. The same report noted that “conflicting duties on universities to promote free speech, whilst precluding the expression of extremist views, is likely to continue to cause confusion”.⁷⁴

It remains to be seen what the long-term consequences are of systems put in place by the Prevent strategy in the UK in the attempt to monitor and prevent the expression of extremist views within public institutions and by particular individuals. One possibility is that the programme becomes successful at identifying individuals at risk, and at making public institutions less accommodating to extremist views, thus diminishing the ability of extremists to propagate their ideas.

However, there are various ways in which the surveillance within UK education of extremist views could have various consequences detrimental to the public good (understood broadly). First, whereas these surveillance measures are introduced in the name of enhancing security, an important societal ‘good’, they could have the opposite result. Just as in the field of policing practices such as stop and search/frisk may erode the police’s perceived legitimacy with those stopped if they perceive the encounter to have been driven by racial factors and hence to lack impartiality and to be procedurally unfair,⁷⁵ so too it is possible that if Muslim pupils, students or educators feel the surveillance measures are not directed equally but instead specifically target them, so too they may perceive the practice and those that are involved in their implementation in a negative light. Moreover, it is further possible that this may in turn lead to mechanisms of ‘labelling’, marginalisation or alienation, in which the very

people to whom the surveillance is directed become more disenchanted and more receptive to processes of ‘radicalisation’.

Second, it is also possible that the imposition of the Prevent duty on educators and other public sector professionals and administrators could lead to a long-term erosion of trust in them, not only in the eyes of British Muslim pupils and students but also within schools, colleges and universities more generally as all participants gain an awareness that there were dangers in expressing one’s true views, leading in turn to a ‘chilling effect’ and the decline of open debate, a public good. Consequently, there could be a decline in the willingness or ability of people to exercise their freedom of expression. Such a development is of particular concern to places of learning since discussion and debate are central to the furtherance of research and understanding as well as to individual development.

The central issue raised by this case is one to which the answer is as yet unknown, namely whether (or to what extent) various liberal-democratic qualities of UK education and the legal regime they inhabit remain ‘resilient’ in the face of the challenge posed by UK security measures themselves designed to address the resilience of pro-extremist views within certain sections of UK society. In particular, it remains to be seen whether a culture of relative freedom of expression and political debate that has been a feature of UK higher education, along with a sentiment of multicultural tolerance embraced within UK schooling, are able to survive in the future should the monitoring processes introduced lead to a chilling effect within the classroom or seminar room. Various countervailing forces may resist or otherwise exhibit resilience in the face of such a challenge, however, ranging from the profession culture within the education profession, to human rights protections afforded by the legal system. It is quite possible however that any impacts experienced are distributed unequally,

with the education sector as a whole remaining largely unaffected, but specific schools, colleges and universities experiencing significant loss of trust between those who are learning and teaching.

The surveillance of digital financial transactions

The global ‘main event’ for the critical understanding of international information transactions has undoubtedly been the revelations made in 2013 by Edward Snowden of the US’s National Security Agency (NSA) and its associates (e.g., GCHQ) in the mass surveillance of communications data. This section of the article does not go over the well-worn content, issues and aftermath of Snowden’s revelations. It focuses instead on much less well-known practices involved in the surveillance of international flows – migration – of financial data through two main instruments that have existed for some time: the Belgian-based Society for Worldwide Interbank Financial Telecommunications (SWIFT), and the US’ Terrorist Finance Tracking Program (TFTP), the histories of which intersect in the wake of the 9/11 terrorist attacks on US targets as their security-related functioning became more evident and gave rise to concern and policy conflict. To be sure, among its surveillance operations, the NSA has been involved in monitoring information about financial transactions. The activities of a third instrument, the France-based Financial Action Task Force on Money Laundering (FATF), are also relevant to this account, particularly as its they extended to cover the financing of terrorist activities from 2001. Underpinning the surveillance of financial transactions lie a range of organisations and operations dedicated to financial intelligence-gathering and communication in the contexts of law enforcement and counter-terrorism.

SWIFT is a co-operative networked company established under Belgian law. It dates from 1973 as a secure and standardised means by which financial institutions can exchange information on financial transactions between their customers. Across the world, most transaction messages of this kind go through SWIFT, to which thousands of banks and other financial organisations subscribe. SWIFT provides a channel for transaction information (the SWIFTNet FIN service), also performing ancillary messaging and management services, and does not itself execute transfer orders between institutions. It operates through data centres in the Netherlands (for the European zone) and also in the US, where the data are mirrored for short-term (124-day) retention. A third centre was established in Switzerland in 2009, since when European-zone SWIFT members' data are no longer duplicated in the US; but transatlantic data are held both in the US and the Swiss centre.

Whereas US authorities had unsuccessfully sought access to SWIFT data in the 1990s,⁷⁶ the advent of the TFTP after 9/11 – under the auspices of the US Treasury, the CIA and other US agencies – brought results. Newspapers in 2006 dramatically revealed the existence of the TFTP and of a secret deal between SWIFT and the US whereby the latter, using subpoenas, gained access to SWIFT data held in the US. These data were used for specific searches and for the mapping or 'link analysis' of networks of suspected persons "without effective and clear legal basis and independent controls in line with Belgian and European law", according to the Belgian Data Protection Commission.⁷⁷ SWIFT's integrity and the confidence of users in the protection of privacy in its services were compromised, and elements of the 'national security v. privacy' debate were to the fore. Within the EU, the Working Party established under Article 29 of the Data Protection Directive 95/46/EC of 1995 expressed its serious concern in 2006, emphasising the failure of the SWIFT-US arrangements to comply with many of the requirements of the Directive.⁷⁸ The Working Party strongly criticised SWIFT's

as well as individual financial institutions' neglect of their legal data protection obligations. The years following the 2006 revelations saw negotiations towards a new agreement between the EU and the US – concluded in July, 2010 – that established the basis for data transfer to the US for TFTP purposes, and included the protection of personal data. The copying of SWIFT data to a US centre eventually ceased at the end of 2009, data thenceforward remaining within the European zone.

Several other European institutions were also active in criticising the way in which financial data were being surreptitiously used, and in developing and scrutinising the proposed agreement as they attempted to reach a solution involving safeguards for information privacy under data protection regulations. These bodies included the European Commission (EC), the European Parliament (EP), and the European Data Protection Supervisor (EDPS); however, the Article 29 Working Party complained that it had not been consulted on the draft negotiating mandate. Although consensus across its Members was difficult to achieve, the EP – similarly displeased by its exclusion from involvement in the EC's activity towards a new agreement – passed a Resolution in September, 2009 with specific demands for stronger privacy safeguards and citizens' rights. While noting that "SWIFT is a key infrastructure for the resilience of Europe's payment systems and securities markets", the EP cited Human Rights documents in emphasising equally that "the European Union is based on the rule of law and that all transfers of European personal data to third countries for security purposes should respect procedural guarantees and defence rights and comply with data-protection legislation at national and European level". Among other aims, it sought legal certainty, immunities, and rights of redress for citizens and organisations whose data were transferred, and urged that transfers should be targeted and proportionate.⁷⁹ Across Member States, data protection authorities (DPAs) co-ordinated their activities, each seeking information from

banking organisations in their countries. The Belgian DPA's inquiry found that SWIFT had been engaged in a "hidden, systematic, massive and long-term violation of the fundamental European principles as regards data protection".⁸⁰

Before the 2010 agreement had been concluded, the influential EDPS highlighted the question whether the TFTP's use of SWIFT data was necessary and proportionate; whilst it was not in a position to determine necessity, it queried the proportionality of bulk transfers of data and the proposed 5-year retention. The EDPS recommended instead a procedure for the filtering of financial transaction data within the EU before transferring them to the US.⁸¹ The agreement provided for bulk transfers but envisaged the formation of a system for extracting the data within the EU, thus ending bulk transfers. However, the EC saw this not only as a means for transatlantic transfer, but also for benefiting the EU's Member States by establishing a European Terrorist financial tracking systems (TFTS), with consequences for EU citizens' privacy. When the EC proposed this in 2011, the EDPS again objected on the grounds of unproven necessity and proportionality, lack of clear procedural (and specifically, judicial-control) guarantees surrounding requests for data extraction, the nature of any oversight mechanisms, and possible function creep through interoperability with other databases.⁸²

In its day, and for several years after, the 'SWIFT affair' had repercussions in the EU as well as in US-EU relations that resembled in severity those that the Snowden revelations would later bring about, and that took their place alongside controversies over passenger name records (PNR) and security in transatlantic counter-terrorist effort. Two years later, financial data tracking came again into prominence through the Snowden documents, which apparently showed how the NSA had been secretly accessing SWIFT's internal data traffic quite

separately from the formal and publicly-agreed mechanisms of the TFTP, and accessing credit-card companies' data as well. The NSA's Tracfin database and its 'Follow the Money' branch were also implicated in the affair, according to secret documents in the hands of *Der Spiegel*.⁸³ This led to the EP's resolution calling on the EC to suspend transfers of TFTP data to the US Treasury.⁸⁴

This account of SWIFT and TFTP provides insights into surveillance issues in and around such transactions. Some have argued that the data-analytic techniques used by TFTP constitute a 'security' rather than a 'surveillance' paradigm, insofar as the flow of data is not surveyed wholesale but is more closely targeted to reveal and analyse networks of actors of interest to law enforcement and counter-terrorism.⁸⁵ However these practices are interpreted and designated, the story of the analysis and use of data on financial transactions also shows the threats against which institutional machinery, policies and practices have been developed. The main threats are of several kinds: (1) terrorism and its financing through global financial transactions; (2) the concomitant threat to the rule of law and to rights from activities designed to combat 1, and to combat a third threat as well: (3) other criminal activity, including money-laundering and financial fraud. There was wide but variable consensus on the reality of these threats, even among political and regulatory bodies making and enforcing policies to regulate the means of combating them, who were often sceptical about the extent of some of these dangers and the necessity and proportionality of measures to prevent or respond to them.

The 'SWIFT affair' also illustrates the dynamics of relationships among various financial, governing and regulatory actors. It is noteworthy that the general public as such seems to have played a negligible part in the affair as protestors or as actors in political activities and

organisations involved in the affair. The EU institutions as well as SWIFT and even the NSA purported to act in the interests of the general public, whether the latter are seen as those whose interests are at stake in either surveillance/security activities or in the limitation of these activities. So, too did certain civil-society groups who were concerned with ensuring that the agreements and systems set up for financial surveillance and security did not damage rights. But, compared with the public reaction to the Snowden revelations, civil society, the general public and even the media were only lightly involved as participants in the affair. Some of the institutions of the EU were able to concert their inputs to policy-making, largely in reaction to the initiatives of the EC and the Council, and to try to achieve more stringent safeguards as well as transparency.

The consequences for important public goods were important in the story of the flow of financial information between the EU and the US. Security against terrorism (and financially related crime) was seen as strengthened by ensuring the flow of financial tracking information. But institutions that championed the rights of citizens and that sought ways of keeping those surveillance and security measures within bounds perceived the threat to the rule of law and to citizens' rights if this flow were not carefully regulated. The public goods of privacy and the rule of law were seen as strengthened if safeguards could be written into transfer agreements and by locating the selection of data and its governance within the EU.

There was also a less frequently discussed threat and public good at stake: the integrity of, and trust in, communications and data in financial and banking systems that handle global commercial transactions. Integrity and trust may be undermined by terrorists and fraudsters who exploit the possibilities afforded by the financial system. Both the security-related resilience to the financing of terrorism and crime and the human rights-related resilience to

the accessing of personal communications data have to be considered alongside the consequences for trust in the financial system's integrity as a public good, beyond the more evident individual good – to which the interests of financial institutions are connected – that inheres in the security of individuals' financial transactions. But this threat to the integrity of the global financial system is also posed if its processes are suborned by hidden or even publicly agreed processes that, while designed to protect the system and to combat terrorism and financial crime, have potentially adverse effects on the public good of trust and confidence in financial institutions, in which banking customers have placed their trust that information about financial transactions would remain confidential and not become accessible by third parties.

Analysis Across Cases

Ideally, each of these cases would deserve more detailed description and analysis, especially in terms of the resilience models we are concerned to develop. However, even in abbreviated form all these cases tell us something about the (degree of) resilience of institutions and people⁸⁶ in the face of perceived dangers: 'extremists', migrants, and terrorist- (or crime-) related flows of financial information. They also afford insights into the (degree of) resilience of societies, groups and individuals as they respond to surveillance or, more incidentally, cope with perceived non-surveillance threats. The descriptive case studies allowed us to disaggregate strategically in order to gain a better grasp of the activities involved in terms of the three aspects: the *relationships* involved in surveillance and in resilience in the face of it; the *dynamics* of the processes of surveillance-and-resilience over time; and the *consequences* of surveillance for the various public goods at stake. Looking comparatively across the cases, we address these briefly in turn:

Relationships involved in surveillance and in resilience

In each case there were multiple watchers and watched, and different kinds of institutions or organised interests that participated in applying surveillance and in resilient behaviour in the face of it. This is not surprising, but it serves to remind us that – in the terms of our abstract models and diagrams, the sources of stress or shock may be multiple. Where this is so, it would require further disaggregated investigation of the relationships on either side of the surveillance/resilience boundary. The ‘stakeholders’ have a multiple, interdependent relationship: not only are the stresses and shocks multiple, but so are the resilience responses. The migration case showed that the interests of the surveilling parties are also changing, sometimes trying to avoid the identification, registration and surveillance of the refugees, thus showing signs of political resilience, even resistance towards EU policies. Thus the system is constantly shaped by these shifting and interactive factors, initiatives and responses among both the watchers and the watched.

Dynamics of the processes of surveillance-and-resilience

The cases all showed how different groups, organisations and individuals (and their relationships) were involved at different phases of the dynamic process over time. The point(s) at which those subjected to surveillance perceive the stress/shock and the threat to public goods is a crucial element in shaping their behaviour, whether resilience, resistance, or some other form.⁸⁷ In the cases of migration and control of extremist views, precaution or prevention were not options for those under surveillance. In the case of financial communications, terrorists and fraudsters were likely to be able to anticipate the tracking of their transactions, and could attempt to avoid or evade detection of their operations. Such resilience, in turn, was foreseen by agencies in their own resilient activities, in which they attempted to foreclose the opportunities for unsurveilled transactions by means of a global

infrastructure for detecting and disrupting the financing of terrorist activities, financial fraud and other criminal behaviour. Similarly, the resilience of counter-terrorism forces was manifest in the ‘Prevent’ strategy which, by its very name, indicated an attempt to forestall ‘extremist’ expression and to put in place an elaborate system for detecting, reporting and sanctioning such expression.

Consequences of surveillance for public goods

Various public goods and the consequences of their erosion through surveillance also were evident as among various individuals, groups, societies or institutions that are the subjects of surveillance. There may be emergency situations when the realisation of certain public goods (and the rights reflecting them) are restricted or even suspended, and surveillance is centrally implicated in that; after the emergency has subsided, resilience would imply recovery and restoration of these public goods, although it is very likely that, to some degree, the system that restricted the rights or public goods will remain as a more or less permanent and ‘normalised’ feature, as people get used to the restriction and as the vested interests in applying surveillance gain strength. The basic set of public goods in a Western society may not be changing significantly, but their actual relative importance may change, in particular with regard to security. In many political and public-opinion quarters, security as a public good has come to be seen as opposed to privacy, usually interpreted as a fundamental right of individuals, although there are strong arguments that it should be seen as a *public* good of categorically equal status to security in that both are constitutive of the liberties and freedoms enjoyed in liberal democratic societies.⁸⁸ Privacy is one of the most surveillance-impacted public goods in itself, as seen in the cases. Its restriction in other security-related settings in turn potentially damages other public goods such as the freedoms of speech, assembly, and communication.

Conclusion: Future Research Questions

We conclude with some further brief observations on the cases and on the analysis, with some reflections on how they might be further developed. Much more could be done by way of analysis of the three situations, and of any others that might be invoked on the descriptive plane. The cases illustrate different types of surveillance processes as they occur in contemporary terrorism-related situations, although the degree to which these situations involve terrorism-related threats differs: migration is only in some small part a source of fears about terrorism as such, and has more to do with fears about strangers and their claims upon countries' resources. The geographical spread and choice of cases reflected our knowledge and the prominence of the phenomena described, rather than methodological concerns to test any hypotheses or to deploy a strategic, systematic, theoretically or conceptually driven outlook on surveillance and resilience. Thus the short study of the surveillance of 'extremist' views was based on the UK; that of migration had to do with Europe and more specifically on Central and Eastern Europe; and that of financial transactions related especially to Europe and the international or global arena. These differences run the gamut of macro-, meso-, and micro-levels of analysis (macro: international and states; meso: a society and its components; micro: individuals and intimate groupings) although we have not systematically exploited the insights that these categories are likely to afford, or the hypotheses that they are likely to generate.

However, in this article we did not explore these analytical opportunities to any extent; nor did our case narratives systematically plot actions and reactions against the time dimension that we indicated in Figure 1 above, which was derived from the agricultural development example provided by Montpellier.⁸⁹ That diagram sequentially labelled seven phases of a

development trajectory, susceptible to stresses and shocks, as ‘anticipate, survey, prevent, tolerate, recover, restore, learn’.⁹⁰ Although other categories than these might be more suitable for disaggregating the time dimension, it would be necessary to re-describe case narratives in terms of whatever categorical scheme is used. An advantage of this would be greater understanding of the surveillance/resilience complex and its analysis in a variety of comparative dimensions, not only geographical ones or at different levels, but also in many substantive areas of everyday life.

Another important piece of unfinished business is to highlight the importance of the *perception* of danger, locating it in a temporal dimension and showing its relation to the ability to be resilient and to the steps (or leaps) taken to ‘bounce back’. At what time (phase) was an ‘extremist’, migration, or terrorist financing threat perceived? Or have these ‘threats’ been to some extent manufactured or socially shaped in order to justify surveillance as a resilient response by states, societies and organisations? And when, in turn, were the ‘threats’ posed by surveillance and the potential damage to public goods (and which ones) perceived, and how was that perception shaped? These would be essential avenues to be explored in the situation of surveillance and resilience.

This article is but a stage of a longer study in the intersection of surveillance and resilience. It is intended for discussion, and we hope it will give rise to new questions and new insights. While a central issue is the way in which different groups exhibit degrees of resilience to surveillance, our discussion has also noted how this can play into the dynamic of surveiller and surveilled, and indeed how ‘resilience’ can be identified in various different elements of the analyses and at different societal scales, from the micro to the macro. Such analysis flows from the basic premise, namely that the concept of resilience is not limited in applicability to

the security state alone, but is a general concept, and one potentially having analytic applicability to a range of societal practices.

In addition to suggesting the insights that attending to the notion of resilience can bring to the study of societal responses to surveillance, we can indicate how the case studies and analysis could contribute to a partial rethinking of the concept or derived model of resilience with which this discussion began. In particular, it seems important here to distinguish between ‘resilience’ as a quality of an entity, and a ‘resilience model’ in which the exhibition of resilience by an entity is only one possible outcome (the others including system collapse, for example). Even in the former case, the attribution of ‘resilience’ to a system is not straightforward, since if resilience can involve recovery from a severe setback caused by a major external shock or series of stresses, then whether or not resilience is empirically determined to have been exhibited will depend on the time-frame of the subsequent evaluation. To explore the applicability of ‘resilience’ to a social system is not necessarily to assume that it is necessarily to be found there. In addition, the ambiguities as to what ‘resilience’ might involve should also lead us towards circumspection regarding the application of the concept to actual empirical states of affairs. Moreover, rather than consider ‘resilience’ exclusively at the level of society as a whole, our analysis suggests that it is important for any theory of resilience to recognise that at a given point in time different sectors or subsystems of society may exhibit (possibly wildly) different degrees of resilience. Having said this, we nevertheless contend that there is merit in taking the concept of resilience seriously and in exploring its social-scientific applications, not least for the concept’s utility in exploring a system or subsystem’s range of adaptive responses over time to challenges of one kind or another.

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- ¹ David Murakami Wood, Kirstie Ball, David Lyon, Clive Norris and Charles Raab, *A Report on the Surveillance Society* (Wilmslow: Office of the Information Commissioner, 2006).
- ² David Lyon, *Surveillance after September 11* (Cambridge: Polity Press, 2003).
- ³ Charles Raab, Richard Jones and Iván Székely, "Surveillance and Resilience in Theory and Practice", *Media and Communication*, 3, no. 2 (2015): 21-41.; Jon Coaffee and Pete Fussey, "Constructing resilience through security and surveillance: The politics, practices and tensions of security-driven resilience", *Security Dialogue*, 46, no. 1 (2015) 86-105.
- ⁴ Philippe Bourbeau, "Resiliencism: Premises and Promises in Securitisation Research. Resilience: International Policies, Practices and Discourses", Vol. 1, No. 1 (2013), 3-17; David Chandler, "Resilience and Human Security: The Post-interventionist Paradigm", *Security Dialogue* Vol. 43, No. 3 (2012), 213-229.
- ⁵ Mark Neocleous, "Resisting resilience". *Radical Philosophy*, 178 (2013): 2-7.
- ⁶ Jon Coaffee and Pete Fussey, "Constructing resilience through security and surveillance: The politics, practices and tensions of security-driven resilience", *Security Dialogue*, 46, no. 1 (2015) 86-105.
- ⁷ Charles Raab, Richard Jones and Iván Székely, "Surveillance and Resilience in Theory and Practice", *Media and Communication*, 3, no. 2 (2015): 21-41.
- ⁸ Ian Loader and Neil Walker, *Civilizing Security* (Cambridge: Cambridge University Press, 2007).
- ⁹ Charles Raab, Richard Jones and Iván Székely, "Surveillance and Resilience in Theory and Practice", *Media and Communication*, 3, no. 2 (2015): 21-41.
- ¹⁰ Angela Kallhoff, *Why Democracy Needs Public Goods*, Lanham, MD: Lexington Books (Rowman & Littlefield Publishers, 2011)
- ¹¹ See Charles Raab (2012), "Privacy, Social Values and the Public Interest", pp. 129-151 in Andreas Busch and Jeanette Hofmann (eds.) 'Politik und die Regulierung von Information' ['Politics and the Regulation of Information'], *Politische Vierteljahresschrift Sonderheft 46*, Baden-Baden: Nomos Verlagsgesellschaft, and the literature cited therein; Charles Raab, "Privacy as a Security Value", in Dag Wiese Schartum, Lee Bygrave and Anne Gunn Berge Bekken (eds.), *Jon Bing: En Hyllest / A Tribute* (Oslo: Gyldendal); Charles Raab (2017), "Security, Privacy and Oversight", pp. 77-102 in Andrew Neal (ed.), *Security in a Small Nation: Scotland, Democracy, Politics*. Cambridge: Open Book Publishers.
- ¹² Nussbaum, Martha (2000) *Women and human development: the capabilities approach* (Cambridge, New York, NY: Cambridge University Press, 2000) and elsewhere.
- ¹³ John Rawls, *Theory of Justice (Revised Edition)* (Cambridge, MA: Harvard University Press [1971] [1999] 2003): 54.
- ¹⁴ Scott Christley, Xu Jin, Gao Yongqin and Greg Madey (2004) "Public goods theory of the open source development community using agent-based simulation", available at: http://www3.nd.edu/~oss/Papers/oss_public_goods.pdf
- ¹⁵ <http://digitalcommons.bepress.com/faq>
- ¹⁶ <http://creativecommons.org/>
- ¹⁷ Ian Loader and Neil Walker, *Civilizing Security* (Cambridge: Cambridge University Press, 2007).
- ¹⁸ It is not only western liberal constitutional democracies that have constitutive public goods that are valuable and indispensable for the society, that can be eroded by external adverse impacts (even by the effects of globalisation), and towards which the given society – if it attempts to preserve its core characteristics – has to be resilient.
- ¹⁹ Honneth criticises today's political philosophy because it evaluates existing societies by comparing them to abstract principles, but he also criticises sociologists who analyse the characteristics of existing societies, because they get lost in details and cannot see the whole: see Axel Honneth, *Freedom's Right: The Social Foundations of Democratic Life* (New Directions in Critical Theory), (New York, NY: Columbia University Press, 2014).
- ²⁰ See for example, Kenneth Cukier and Viktor Mayer-Schönberger (2013), "The Rise of Big Data", *Foreign Affairs* (May/June): 28–40. <https://www.foreignaffairs.com/articles/2013-04-03/rise-big-data>
- ²¹ However, such a strong judgment is not even made by radical critics of predictive data analysis or by advocates of personal autonomy. It seems that we rather tend to take out personal autonomy from the list of constitutive public goods. Rouvroy – a philosopher investigating questions about the information society and algorithmic governmentality – goes as far as to talk about the need of a new social contract, and this implies the rearranging of the sphere of constitutive public goods; see Antoinette Rouvroy, "'Of Data and Men': Fundamental Rights and Freedoms in a World of Big Data", Report prepared for the Directorate General of

Human Rights and Rule of Law, (Strasbourg: Council of Europe, 2016). During an earlier personal conversation, Rouvroy stated that there is only one ultimate principle she tends to accept as a constant constitutive public good in a desirable future society: *contestability*.

²² ‘Balancing’ is a central element in the so-called trade-off model between security and privacy, which has been much criticised in recent years (e.g., Charles Raab, “From Balancing to Steering: New Directions for Data Protection”, in Colin Bennett and Rebecca Grant (eds.), *Visions of Privacy: Policy Approaches for the Digital Age* (Toronto: University of Toronto Press, 1999). A pan-European survey conducted by the public opinion research company Ipsos in the framework of an EU FP7 research project, PRISMS, clearly showed that in people’s mind security and privacy are two separate values; one cannot infer the importance of one value from the other – people want both at the same time; see Michael Friedewald, Marc van Lieshout, Sven Rung, Merel Ooms and Jelmer Ypma “Privacy and Security Perceptions of European Citizens: A Test of the Trade-off Model”, in Jan Camenisch, Simone Fischer-Hübner and Marit Hansen (eds.), *Privacy and Identity Management for the Future Internet in the Age of Globalisation*: 9th IFIP WG 9.2, 9.5, 9.6/11.7, 11.4, 11.6/SIG 9.2.2 International Summer School, Patras, Greece, September 7-12, 2014, Revised Selected Papers (Springer, 2015).

²³ From the host of arguments and publications we only mention here Lyon’s works on increasing social sorting, e.g., David Lyon (ed.), *Surveillance as Social Sorting: Privacy, Risk, and Digital Discrimination* (London: Routledge, 2002).

²⁴ Bela Greskovits, “The Hollowing and Backsliding of Democracy in East Central Europe”, *Global Policy*, 6 (2015), Issue Supplement S1: 28-37.

²⁵ Iván Székely, “Hungary”, in James B. Rule and Graham Greenleaf (eds.), *Global Privacy Protection: The First Generation*, (Edward Elgar Publishing Ltd., 2008): 174–206.

²⁶ Janos Kis, “To the conceptual topography of autocracies”, keynote speech delivered at the conference “In the name of the People” (Budapest: Central European University, 12 January 2016).

²⁷ Naturally, the ‘abstract’ elements of constitutive public goods, such as trust and solidarity, can also be measured by applying methodologies of social sciences. However, a fundamental limitation of measuring such constitutive public goods is that their manifestation typically occurs in the interpersonal private domain where the intrusion of legal and institutional systems – exactly because of the fundamental values and constitutive public goods of western liberal societies – is rather restricted.

²⁸ Will Kymlicka, “Solidarity in Diverse Societies: beyond neoliberal multiculturalism and welfare chauvinism”, *Comparative Migration Studies*, 3 (2015):17, available at: <http://comparativemigrationstudies.springeropen.com/articles/10.1186/s40878-015-0017-4>

²⁹ The changing definition and naming of this phenomenon in the media clearly mirrors the changes in ideological, economic and political concerns of the respective European countries. Hungary, which in 2015 became one of the main terrestrial routes of refugees heading to Austria and Germany, has a strongly centralised media controlled by the ruling political power. Therefore, the presentation of the events and the masses of people entering the country in the media as ‘migrants’, ‘refugees’, ‘illegal border-crossers’ or ‘immigrants’ closely follows the changing interests and position of the government both inland and in the EU. In the following, we will talk about ‘refugees’, however including all other individuals who join the migration of refugees for other reasons.

³⁰ In the literature, the notion of mass surveillance is often used for denoting mass *individual* or targeted surveillance; here we mean surveillance the subject of which is the group or mass of people itself. We use the term ‘group’ without implying anything about the extent to which the mass of migrants is organised. Some would say they are a ‘category’ rather than a ‘group’.

³¹ Individual surveillance, i.e. targeting *identified* individuals, can be performed *en masse*, too.

³² Germany, for example, has repeatedly advocated the duty of EU member states to offer their help to the refugees, in proportion to their economic strength. On the other hand, Hungary, seemingly forgetting how Hungarian refugees had been received by the West after the 1956 revolution, erected a new ‘Iron Curtain’ at its southern border (even exporting its razor wire technology to other countries) and held a national referendum in October 2016 against the acceptance of the mere 2,100 refugees imposed by the proposed EU quota. The referendum was not valid but the majority voted against accepting the EU quota, see for example <https://www.theguardian.com/world/2016/oct/02/hungarian-vote-on-refugees-will-not-take-place-suggest-first-poll-results>. The ruling political regime is planning to include the prohibition of accepting EU rules on refugees in the constitution of the country.

³³ See Charles Raab, Richard Jones and Iván Székely, “Surveillance and Resilience in Theory and Practice”, *Media and Communication*, 3, no. 2 (2015): 21-41.

³⁴ The Hungarian Helsinki Committee is a human rights organisation established in 1989, which provide help to refugees, detainees and victims of law enforcement violence, <http://www.helsinki.hu/en/>

³⁵ According to security policy experts, this significantly reduced their chances to receive political refugee status in the EU, see <http://dailynewshungary.com/georg-spottle-it-is-incomprehensible-why-the-syrian-migrants-throw-away-their-documents/>

³⁶ A Dutch journalist recently managed to have a forged passport issued in Syria with the photo of the Dutch Prime Minister, <https://twitter.com/HaraldDoornbos/status/644056427716345856>

³⁷ <http://www.nytimes.com/interactive/projects/cp/reporters-notebook/migrants/denmark-refugees>

³⁸ <http://www.nytimes.com/interactive/projects/cp/reporters-notebook/migrants/hungary-treatment-refugees> The same happened on the Italian island of Lampedusa, where refugees publicly protested against their being fingerprinted.

³⁹ <http://www.nytimes.com/2015/09/04/world/europe/czech-republic-criticized-after-officers-mark-migrants-with-numbers.html?ref=topics>

⁴⁰ http://www.nytimes.com/2015/09/05/world/treatment-of-migrants-evokes-memories-of-europes-darkest-hour.html?_r=1

⁴¹ Nevertheless, anonymised biometric registration, such as the experimental use of iris scans by UN authorities among Afghan refugees, has its risks: false positives and false negatives can stigmatise those concerned without their accompanying ID data; see Katja L. Jacobsen (2015) ‘Experimentation in humanitarian locations: UNHCR and biometric registration of Afghan refugees’, *Security Dialogue*, 46, no. 2: 144–164.

⁴² According to a German news report, the German authorities determined that in the first half of the year 2016, 1% of the checked 217,000 passports, birth certificates and driver’s licences proved to be forged. See: <https://www.welt.de/politik/deutschland/article158635196/Auf-nach-Deutschland-mit-gefaelschtem-Pass.html>

⁴³ The case was documented by a lawyer of the Hungarian Helsinki Committee, who defended the person.

⁴⁴ We should note however that the notion of ‘family’ is a broader cultural concept in many societies than genetic relationship.

⁴⁵ See the training manual on the credibility assessment in asylum procedures, published by the Hungarian Helsinki Committee in cooperation with the United Nations High Commissioner for Refugees (UNHCR), the European Council on Refugees and Exiles (ECRE) and Asylum Aid (UK) ; see Gabor Gyulai, Debora Singer, S. Chelvan and Zoe Given-Wilson *Credibility Assessment in Asylum Procedures: A Multidisciplinary Training Manual* (Budapest: Hungarian Helsinki Committee, 2015), available at: <http://www.helsinki.hu/en/credibility-assessment-in-asylum-procedures-a-multidisciplinary-training-manual/>

⁴⁶ In December 2015 the European Commission opened an infringement procedure against Hungary concerning the recently adopted Hungarian asylum legislation; see European Commission, “Commission opens infringement procedure against Hungary concerning its asylum law”, Press release, 10 December 2015, available at: http://europa.eu/rapid/press-release_IP-15-6228_en.htm

⁴⁷ In Hungary the Anti-Terrorist Task Force analyses the contents of the discarded smartphones found around the border, see:

http://index.hu/belfold/2015/10/07/a_tek_vizsgalja_a_migransok_elhagyott_telefonjait/ [in Hungarian]

⁴⁸ Katja L. Jacobsen “Experimentation in humanitarian locations: UNHCR and biometric registration of Afghan refugees”, *Security Dialogue*, 46, no.2 (2015), 144–164.

⁴⁹ Oscar Gandy, *The Panoptic Sort: A Political Economy of Personal Information*, (Boulder, CO: Westview Press, 1993); David Lyon, *Surveillance Society: Monitoring Everyday Life*, (Buckingham: Open University Press, 2001).

⁵⁰ House of Commons (2006), *Report of the Official Account of the Bombings in London on 7th July 2005* (HC 1087) (London: The Stationery Office, 2006); Intelligence and Security Committee, *Report into the London Terrorist Attacks on 7 July 2005* (Cm 6785) (London: The Stationery Office, 2006); UK Government, *Government Response to the Intelligence and Security Committee’s Report into the London Terrorist Attacks on 7 July 2005* (Cm 6786) (London: The Stationery Office, 2006).

⁵¹ UK Government, *Contest: The United Kingdom’s Strategy for Countering Terrorism* (Cm 8123). (London: HMSO, 2011).

⁵² Paul Thomas, “Failed and Friendless: The UK’s ‘Preventing Violent Extremism’ Programme”, *British Journal of Politics and International Relations*, 12 (2010): 442-458, at 444.

⁵³ UK Government, *Contest: The United Kingdom’s Strategy for Countering Terrorism* (Cm 8123). London: HMSO, 2011): 10.

⁵⁴ Arun Kundnani, *Spooked: How Not to Prevent Violent Extremism*, London: Institute of Race Relations, 2009): 8, cited in Paul Thomas, “Failed and Friendless: The UK’s ‘Preventing Violent Extremism’ Programme”, *British Journal of Politics and International Relations*, 12 (2010): 442-458, at 448.

⁵⁵ Norman Bettison, ‘Preventing Violent Extremism—A Police Response’, *Policing*, 3, no. 2 (2009): 129-138, at 133.

⁵⁶ David Murray, “The Prevent strategy: a textbook example of how to alienate just about everybody”, *The Daily Telegraph*, 31 March 2010.

- ⁵⁷ Paul Thomas, “Failed and Friendless: The UK’s ‘Preventing Violent Extremism’ Programme”, *British Journal of Politics and International Relations*, 12 (2010): 442-458, at 443.
- ⁵⁸ Martin Innes, Colin Roberts and Helen Innes, *Assessing the Effects of Prevent Policing*. (London: The Association of Chief Police Officers, 2011).
- ⁵⁹ Alex (Lord) Carlile, *Report to the Home Secretary of Independent Oversight of Prevent Review and Strategy* (London: Home Office, 2011).
- ⁶⁰ UK Government, *Prevent Strategy* (Cm 8092) (London: The Stationery Office, 2011).
- ⁶¹ HM Government, *Channel Duty Guidance: Protecting vulnerable people from being drawn into terrorism*, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/425189/Channel_Duty_Guidance_April_2015.pdf: 5.
- ⁶² HM Government, *Channel Duty Guidance: Protecting vulnerable people from being drawn into terrorism*, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/425189/Channel_Duty_Guidance_April_2015.pdf: 7.
- ⁶³ UK Government, *Prevent Strategy* (Cm 8092) (London: The Stationery Office, 2011): 7.
- ⁶⁴ UK Government, *Prevent Strategy* (Cm 8092) (London: The Stationery Office, 2011): 12.
- ⁶⁵ See for example, HM Government / The Scottish Government, *Prevent Duty Guidance: for higher education institutions in Scotland* (London: Home Office, 2015).
- ⁶⁶ HM Government / The Scottish Government, *Prevent Duty Guidance: for higher education institutions in Scotland* (London: Home Office, 2015): 5.
- ⁶⁷ Anthony E. Bottoms “The Philosophy and Politics of Punishment and Sentencing”, in C. Clarkson and R. Morgan (eds.), *The Politics of Sentencing Reform* (Oxford: Clarendon, 1995)
- ⁶⁸ David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford: Oxford University Press, 2001).
- ⁶⁹ Department for Education, *The Prevent duty: Departmental advice for schools and childcare providers*. London: Department for Education, 2015).
- ⁷⁰ Department for Education, *The Prevent duty: Departmental advice for schools and childcare providers*. London: Department for Education, 2015): 5
- ⁷¹ Paul Thomas, “Youth, terrorism and education: Britain’s Prevent programme”, *International Journal of Lifelong Education* 35 (2016): 171-187; quotation from Abstract.
- ⁷² Katy Pal Sian, Katy, “Spies, surveillance and stakeouts: monitoring Muslim moves in British state schools”, *Race Ethnicity and Education* 18, no. 2 (2015): 183–201, at 184.
- ⁷³ Aislinn O’Donnell. “Securitisation, counterterrorism and the silencing of Dissent: The educational implications of prevent”, *British Journal of Educational Studies* 64, no.1 (2016): 53–76, at 54.
- ⁷⁴ Joint Committee on Human Rights, *Counter-Extremism* (Second Report of Session 2016-17) (HL Paper 39, HC 105). London: House of Lords and House of Commons, 2016): paras 43-50; para 62.
- ⁷⁵ See: Tom R. Tyler, *Why People Obey the Law* (2nd edition) (New Haven: Yale University Press, 2006); Tom R. Tyler .. “Trust and legitimacy: Policing in the US and Europe”, *European Journal of Criminology*, 8, no. 4 (2011): 254–266; Ben Bradford and Jonathan Jackson, “Enabling and Constraining Police Power: On the Moral Regulation of Policing”, LSE Law, Society and Economy Working Papers 23/2015 (London: London School of Economics and Political Science, 2015).
- ⁷⁶ Mara Wesseling, Mariek de Goede, M. and Louise Amoore, “Data Wars Beyond Surveillance”, *Journal of Cultural Economy*, 5, no.1 (2012): 49-66, at 54.
- ⁷⁷ Quoted in Robin Tudge, *The No-nonsense Guide to Global Surveillance* (New Internationalist, 2011): 53
- ⁷⁸ Article 29 Working Party, WP128, *Opinion 10/2006 on the processing of personal data by the Society for Worldwide Interbank Financial Telecommunication (SWIFT)*, 22 November 2006.
- ⁷⁹ European Digital Rights, “MEPs Ask For A New Agreement On Swift Bank Data Transfers To USA”, EDRI-gram No. 7.18, 23 September 2009, at <http://history.edri.org/edri-gram/number7.18/swift-european-parliament-resolution>, accessed 6 March 2016. The Resolution text (P7_TA(2009)0016) is available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2009-0016&language=EN&ring=B7-2009-0038>, accessed 6 March 2016
- ⁸⁰ Quoted in Article 29 Working Party, WP128, *Opinion 10/2006 on the processing of personal data by the Society for Worldwide Interbank Financial Telecommunication (SWIFT)*, 22 November 2006: 7.
- ⁸¹ European Data Protection Supervisor, *Opinion of the European Data Protection Supervisor – Proposal for a Council Decision on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program (TFTP II)*, 11580/10, Brussels, 28 June 2010.
- ⁸² European Data Protection Supervisor, *Comments on the Communication from the Commission to the*

European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 13 July 2011: "A European territorial finance tracking system: Available options", Brussels, 25 October 2011; available at:

https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Comments/2011/11-10-25_Comments_TFTS_EN.pdf; accessed 6 March 2016.

⁸³ Laura Poitras, Marcel Rosenbach and Holger Stark, "Follow the Money': NSA Monitors Financial World", *Spiegel Online International*, 16 September 2013; available at: <http://www.spiegel.de/international/world/how-the-nsa-spies-on-international-bank-transactions-a-922430.html>, accessed 2 March 2016.

⁸⁴ European Parliament Newsroom, "MEPs call for suspension of EU-US bank data deal in response to NSA snooping" 23/10/13, available at: <http://www.europarl.europa.eu/news/en/news-room/20131021IPR22725/MEPs-call-for-suspension-of-EU-US-bank-data-deal-in-response-to-NSA-snooping>; accessed 6 March 2016.

⁸⁵ Mara Wesseling, Marieke de Goede, M. and Louise Amoore, "Data Wars Beyond Surveillance", *Journal of Cultural Economy*, 5, no.1 (2012): 49-66.

⁸⁶ Here it might be possible to classify surveillance subjects according to cultural-theory types as developed and applied by Douglas and Wildavsky, and to explain their resilient or other responses according to locations within a 4x4 'grid/group' matrix; see Mary Douglas and Aaron Wildavsky (1982) *Risk and Culture: An Essay on the Selection of Technical and Environmental Dangers* (Berkeley, CA: University of California Press, 1982).

⁸⁷ Charles Raab, Richard Jones and Iván Székely, "Surveillance and Resilience in Theory and Practice", *Media and Communication*, 3, no. 2 (2015): 21-41.

⁸⁸ Charles Raab, "Privacy as a Security Value", in Dag Wiese Schartum, Lee Bygrave and Anne Gunn Berge Bekken (eds.), *Jon Bing: En Hyllest / A Tribute* (Oslo: Gyldendal, 2014).

⁸⁹ The Montpellier Panel, *Growth with Resilience: Opportunities in African agriculture* (London: Agriculture for Impact, 2012), available at: <https://workspace.imperial.ac.uk/africanagriculturaldevelopment/Public/Montpellier%20Panel%20Report%202012.pdf>: 11.

⁹⁰ See Charles Raab, Richard Jones and Iván Székely, "Surveillance and Resilience in Theory and Practice", *Media and Communication*, 3, no. 2 (2015): 21-41.

Figures for paper:
‘Surveillance and Resilience: Relationships, Dynamics and Consequences’

Table 1. Three applications of the concept of resilience

1. Resilience of a social entity	2. Resilience of an undesired target group	3. Resilience of public goods
(e.g. individual psychological resilience, community resilience, state resilience)	(e.g. resilience of a terrorist or organised criminal network to detection or disruption)	(e.g. resilience of freedom of expression in the face of state surveillance of citizens’ communications)

Figure 1: General model of resilience

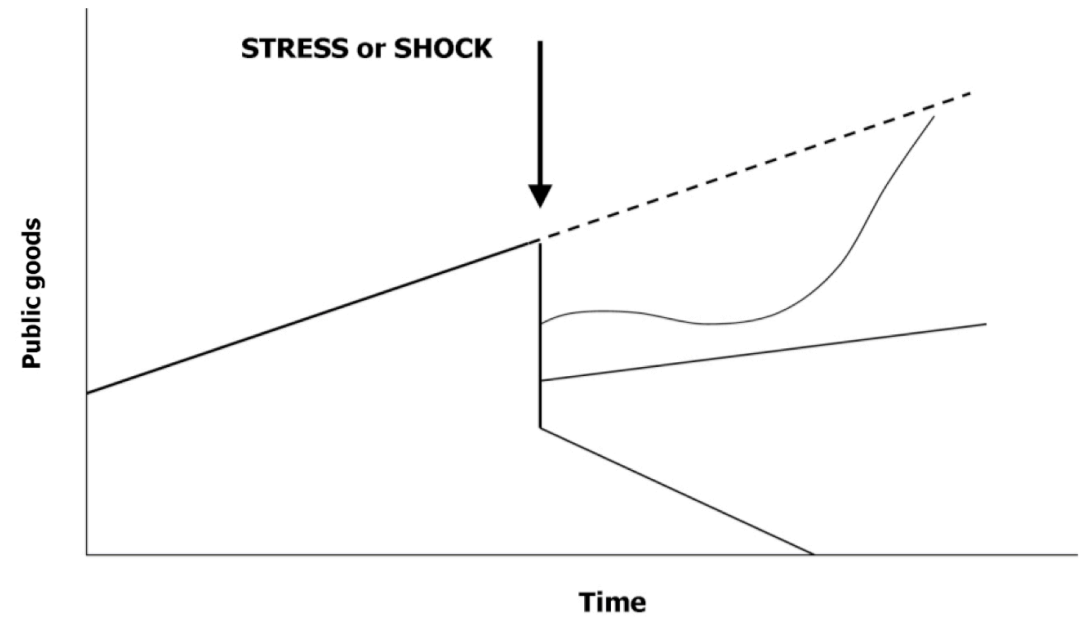


Figure 1 depicts two axes: public goods, and time, thus making it clear that (x-axis) there is a temporal flow of events and processes, in which different constituent elements – such as anticipation, reaction, or learning – pertain to different moments or episodes related to the stress(es) or shocks that are at the centre of attention in resilience. The y-axis indicates that what are at stake are public goods. Which elements and which public goods are implicated is not shown, but would be important to identify in more finely grained and empirically informed Figures.

Figure 2. Basic resilience model.

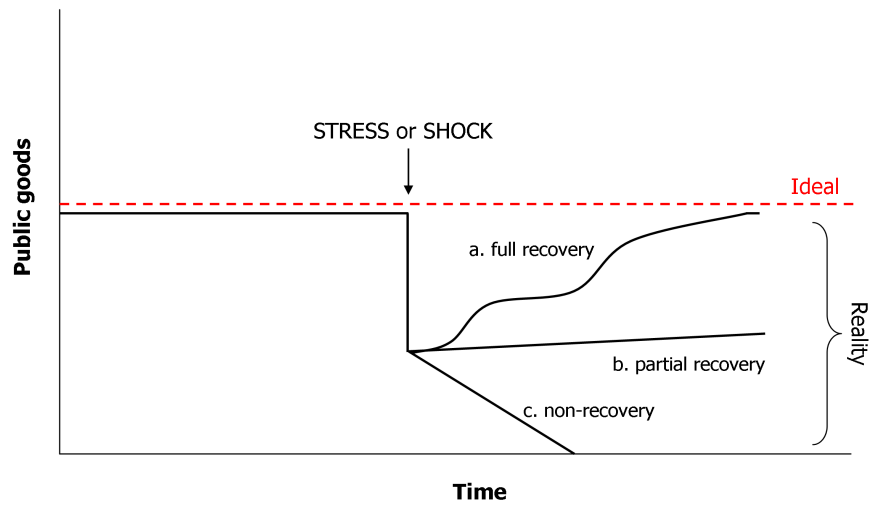


Figure 3. Basic resistance model.

